

In re Elwood Case #389-32419-H7

Elwood v. First Bank Great Falls

Adv Pro No. 89-3181-H

8/30/90

HLH

Unpublished

A chapter 7 debtor sought to discharge \$3904.39 in student loan debt under § 523(a)(8). The debtor's budget showed a deficit of \$203 per month and there appeared no prospects of the debtor obtaining more lucrative employment in the future.

The creditor argued that parts of the budget were excessive, but offered no evidence to contradict the debtor's testimony that the budget was accurate.

The court found the debtor's testimony credible and the budget reasonable. While indicating that \$139 monthly for recreation may not be unreasonable, even ignoring the budget for recreation, the debtor's budget was still in a deficit situation and would remain so for over 2 years. Thus, the court concluded that not discharging the debt would result in an undue hardship on the debtor.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re)	
)	Case No. 389-32419-H7
TODD CHRISTOPHER ELWOOD)	
)	
<u>Debtor.</u>)	
)	
TODD CHRISTOPHER ELWOOD)	
)	
Plaintiff,)	Adv. No. 89-3181-H
)	
v.)	
)	OPINION
)	
FIRST BANK GREAT FALLS)	
)	
Defendant.)	

This matter came before the court at a trial upon the chapter 7 debtor's complaint seeking to determine the dischargeability of a student loan obligation under 11 U.S.C. Section 523(a)(8). The plaintiff/debtor ("Debtor") was represented by Robert Ehmann of Pendleton, Oregon and the defendant/creditor ("Creditor") was represented by David Wiles

of Portland, Oregon.

ISSUE

The sole issue is whether excepting the \$3904.39 student loan obligation from discharge will impose an undue hardship on the Debtor.

EVIDENCE PRESENTED

At the trial, the only testimony was from the Debtor. In addition, the Debtor introduced a summary of his current income and expenses as plaintiff's exhibit #2 (said summary will hereafter be referred to as the "budget") and copies of medical reports. No testimony or exhibits were introduced on behalf of the Creditor.

The Creditor argued that the Debtor's budget was unreasonable. Specifically, the Creditor argued that:

1. The monthly expense item of \$150 for "Telephone" is excessive.
2. The monthly expense item of \$139 for "Recreation" is excessive.
3. The monthly expense items totaling \$125 for "Payment to Mother" and "Payment to Sister" should be ignored since the debts they service will be paid in full in approximately 4 months.

The Debtor testified that the budget accurately reflects his income and expenses. That document reflects that the Debtor takes home approximately \$1,614 per month and incurs expenses of approximately \$1,817 per month. Thus, at present,

the budget shows a deficit of \$203 per month.

The Debtor testified that the telephone expense of \$150 per month is necessary to maintain his employment as a truck driver. He explained that he is required to periodically telephone his employer from great distances. He also testified that he receives no reimbursement from his employer for his "on the road" expenses including long distance telephone charges.

The Debtor also testified that his budget includes \$139 per month for recreation and that this was primarily for expenses incurred in taking a companion to dinner and/or a movie from time to time.

When asked about the \$125 monthly payment to his mother and sister, the Debtor answered that these amounts are to repay approximately \$500 loaned him, postpetition, for living expenses and payment of other postpetition bills while he was unemployed.

The Debtor further testified that he currently owes approximately \$1029 in fines for moving violations. Finally, the Debtor testified that, although he was trained in auto body repair and has prior experience as a car mechanic, he cannot return to these jobs for health reasons and he apparently has no prospect of obtaining other, more lucrative, employment.

FINDINGS OF FACT

The court finds that the budget (plaintiff's exhibit #2) accurately reflects the Debtor's income and expenses except that it excludes any provision for repayment of the fines.

CONCLUSIONS OF LAW

The court concludes from the evidence that the expense item for "Telephone" is reasonable and necessary as a condition of Debtor's employment. Thus, it is not excessive.

The Creditor did not argue that it is improper for the budget to include some amount for "Recreation". Rather, the Creditor argued that the amount in the budget is excessive. On the other hand it made no suggestion as to what sum might be reasonable. While the court does not believe that approximately \$30 per week for recreation for a single person is excessive, even if the court entirely eliminated this item, the budget would still show a deficit of \$64.

While the postpetition debts to the mother and sister would be paid in full in only 4 months at \$125 per month, the fact is that, even if recreation expenses are completely eliminated, the Debtor would have only \$61 per month to pay on these debts. At that rate, the debts would not be paid in full for at least 8 months.

Further, the Debtor has incurred \$1029 in

postpetition fines that must be paid. At the \$61 per month payment rate, those fines will not be paid for at least 17 months. Thus, even completely ignoring recreation expenses, the Debtor will have no excess funds for over 2 years. At that time, he will have only \$61 per month for much-needed recreation.

In other words, the Debtor's current and reasonably foreseeable income is sufficiently small when compared to his reasonable expenses that excepting any portion of this debt from discharge would impose an undue hardship on him.

The court therefore concludes that the entire obligation is dischargeable. Upon presentation by the debtor's attorney, the court will enter a judgment to that effect. This opinion constitutes the court's findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052(a).

DATED this _____ day of August, 1990.

Henry L. Hess, Jr.
Bankruptcy Judge

cc: Robert Norman Ehmann
Catherine Travis
Robert W. Myers, Trustee